

AMENDED IN SENATE MARCH 18, 2004

SENATE BILL

No. 1275

Introduced by Senator Ortiz

February 13, 2004

An act to add Sections 1264 and 1264.5 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Ortiz. Hospitals: maternity services: *infant feeding assistance*.

Under existing law, the State Department of Health Services regulates the licensure and operation of health facilities, including general acute care hospitals. Violation of these provisions is a crime.

This bill would ~~require~~ *recommend that* a general acute care hospital ~~to~~ provide or arrange for the provision of ~~a minimum of 18 hours of~~ basic lactation management training ~~for all licensed nurses working,~~ *and safe preparation and appropriate bottle feeding techniques of infant formula for all health care practitioners who are permitted to provide these services* in the hospital's maternity unit. The bill would allow a licensed nurse to demonstrate proficiency in basic lactation management, in accordance with standards established by the department, in lieu of completing the training.

This bill would ~~require~~ *recommend that* a general acute care hospital ~~to~~ adopt a policy prohibiting the marketing of infant formula and the distribution of free formula samples in the hospital's maternity ~~units,~~ *nursery, or any other location, except under designated circumstances.* The bill would also prohibit the display of these products, or placards or posters concerning these products. It would authorize the donation or low-price sale of infant formula to a hospital, under certain

conditions. The bill would prohibit a manufacturer of infant formula from marketing or distributing free samples in the hospital. The bill would require the department to consider a hospital's compliance with these provisions when conducting a licensing, audit, or certification review of a maternity ward of nursery.

By expanding the definition of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares:*
- 2 (a) *All new mothers should receive noncommercial,*
- 3 *evidence-based information from health care providers that*
- 4 *supports their ability to make an informed infant feeding choice,*
- 5 *and the best choice for themselves and their families. Existing law*
- 6 *requires all general acute care hospitals, as defined in subdivision*
- 7 *(a) of Section 1250 of, and all special hospitals providing*
- 8 *maternity care, as defined in subdivision (f) of Section 1250 of, the*
- 9 *Health and Safety Code, to make available a breastfeeding*
- 10 *consultant or, alternatively, provide information to the mother on*
- 11 *where to receive breastfeeding information. While the intent of the*
- 12 *Legislature in enacting the current law was to allow women to*
- 13 *receive the breastfeeding support they need in the early postpartum*
- 14 *period, the reality is that in many cases, the law is not being*
- 15 *implemented because there are no provisions for enforcement.*
- 16 *Instead, women encounter multiple barriers during this*
- 17 *vulnerable time, including lack of adequate assistance from health*
- 18 *care providers and commercial messaging and free samples of*
- 19 *formula, which can undermine their choice to breastfeed.*
- 20 (b) *The national goals as set by Healthy People 2010 are for at*
- 21 *least 75 percent of women to initiate breastfeeding, for at least 50*
- 22 *percent to still be breastfeeding at six months, and at least 25*



1 percent by 12 months. Furthermore, the American Academy of
2 Pediatrics recommends that infants should be exclusively
3 breastfed for approximately six months before being introduced to
4 complementary foods. The American Academy of Pediatrics
5 further recommends that breastfeeding continue for at least 12
6 months, and thereafter for as long as mutually desired.

7 (c) Too few women in California exclusively breastfeed their
8 infants in the early postpartum period, let alone in the first six
9 months of life, as recommended by the American Academy of
10 Pediatrics. According to the most recent in-hospital breastfeeding
11 data collected by the State Department of Health Services, 42
12 percent of California mothers are exclusively breastfeeding their
13 babies at the time of hospital discharge. Another 40 percent of
14 California mothers are breastfeeding combined with infant
15 formula supplements at the time of hospital discharge, already
16 compromising breastfeeding efforts and leading to early cessation
17 of breastfeeding. According to the American Academy of Family
18 Physicians, the strongest evidence indicates that the positive
19 effects of breastfeeding are most significant with six months of
20 exclusive breastfeeding. Additionally, studies show that the effects
21 are closely related with improved outcomes being associated with
22 longer breastfeeding duration.

23 (d) There are also racial and ethnic disparities with regard to
24 breastfeeding rates. While 64 percent of white women in
25 California are exclusively breastfeeding in the hospital, only 39
26 percent of Asian/Pacific Islanders, 30 percent of
27 African-American women, and 30 percent of Latinas are doing so.

28 (e) Billions of health care dollars would be saved if more
29 infants were exclusively breastfed and breastfed for a longer
30 duration of time. The United States Department of Agriculture
31 (USDA) estimates that \$2 billion per year are spent by families on
32 infant formula and that between \$3.6 and \$7 billion health care
33 dollars could be saved each year in preventable conditions if
34 breastfeeding rates were increased to the recommended levels.

35 (f) There is consensus among health care experts and
36 institutions that breastfeeding is the superior method of feeding
37 and nurturing infants due to evidence from a plethora of scientific
38 research. The American Dietetic Association states that '[h]uman
39 milk provides optimal nutrition to the infant, with its dynamic
40 composition and the appropriate balance of nutrients provided in

1 easily digestible and bioavailable form.’ According to the
2 American Academy of Pediatrics 1997 Policy Statement,
3 “[h]uman milk is uniquely superior for infant feeding and is
4 species-specific; all substitute feeding options differ markedly
5 from it. The breastfed infant is the reference or normative model
6 against which all alternative feeding methods must be measured
7 with regard to growth, health, development, and all other short-
8 and long-term outcomes.” The Policy Statement also asserts that
9 “[r]esearch in the United States, Canada, Europe, and other
10 developed countries, among predominately middle-class
11 populations, provides strong evidence that human milk feeding
12 decreases the incidence and/or severity of diarrhea, lower
13 respiratory infection, otitis media, bacteremia, bacterial
14 meningitis, botulism, urinary tract infection, and necrotizing
15 enterocolitis.” There are a number of studies that show a possible
16 protective effect of human milk feeding against sudden infant death
17 syndrome, insulin-dependent diabetes mellitus, Crohn’s disease,
18 ulcerative colitis, lymphoma, allergic diseases, and other chronic
19 digestive diseases. The American College of Obstetricians and
20 Gynecologists’ 2000 educational bulletin, ‘Breastfeeding:
21 Maternal and Infant Aspects’ addresses how breastfeeding can
22 impact maternal health, stating that “[b]reastfeeding lessens the
23 mother’s postpartum blood loss, allows bonding with the infant,
24 decreases the risk of ovarian cancer and premenopausal breast
25 cancer, reduces the incidence of pregnancy induced, long term
26 obesity, and can serve, if used under well-defined guidelines, as
27 natural birth control by delaying ovulation.”

28 (g) There are few absolute contraindications to breastfeeding.
29 According to the American Academy of Pediatrics, these include
30 the infant with galactosemia and infants of mothers who use illegal
31 drugs, have untreated active tuberculosis, and have been infected
32 with the human immunodeficiency virus. Most prescription and
33 over-the-counter medications are safe for the breastfed infant with
34 the exception of radioactive isotopes, antimetabolites, cancer
35 chemotherapy agents and a small number of other medications.

36 (h) “Breastfeeding: Investing in California’s Future,” the
37 Breastfeeding Promotion Committee Report to the California
38 Department of Health Services Primary Care and Family Health
39 (1996) found that “women look to health care providers for
40 breastfeeding information and support; however, health care



1 systems, policies, and personnel often unknowingly interfere with
2 the initiation and continuation of breastfeeding. In addition, many
3 women do not have access to appropriate breastfeeding
4 resources.” This report also states that health care professionals
5 are in a key position to affect breastfeeding success and
6 promotional efforts will be successful only if women who are
7 encouraged to breastfeed encounter providers who are able to
8 respond to their needs. In addition, the differences in hospital
9 policies regarding new mother counseling on infant feeding are
10 varied and followup training provided to hospital staff also differ
11 from employer to employer. Due to these issues and differences, a
12 recommended state standard for training on infant feeding
13 techniques will promote awareness among health care
14 professionals of model guidelines and move toward improvement
15 in the delivery of these services.

16 (i) While breastfeeding is the best infant feeding choice for most
17 mothers and babies, all families deserve to receive appropriate
18 counseling on infant feeding, whether they choose to breastfeed or
19 formula feed. Mothers who choose or need to use formula should
20 receive education on the safe preparation of formula and
21 appropriate bottle-feeding techniques. Low-income women, those
22 with low educational attainment and non-English-speaking
23 mothers are particularly vulnerable to a lack of knowledge about
24 how to formula feed safely, placing their infants at greater risk.
25 Formula that is underdiluted or overdiluted can result in serious
26 health problems for infants. Propping a bottle carries risks, such
27 as increased ear infections, aspiration, increased dental caries,
28 and inadequate parent-child attachment. Bottle-feeding also
29 carries a greater risk of overfeeding, which may be a contributing
30 factor in childhood obesity.

31 (j) Learning to breastfeed can take time and practice, making
32 what occurs in the early postpartum period critical to the
33 establishment of lactation. Though a normal breastfed newborn
34 will usually readily take a bottle when it is put into its mouth, it is
35 commonly difficult to get a newborn to accept the breast once
36 bottle feeding has been initiated. The use of infant formula
37 supplements has the negative effect of interfering with the baby’s
38 ability to attach to the breast correctly and decreasing a woman’s
39 milk supply, leading the woman to use more formula and
40 undermining her confidence in her ability to breastfeed.



(k) Research demonstrates that exposure to infant formula literature and free infant formula samples decreases exclusive breastfeeding and is associated with infant formula supplementation, which can lead to early weaning. According to the Cochrane Database of Systematic Review, a professional resource for hospital, research, and teaching institutions, “giving of commercial hospital discharge packs to mothers of newborn babies lowers the extent of exclusive breastfeeding.” This conclusion was based on nine randomized controlled trials involving a total of 3,730 women. In addition, according to survey results from the State Department of Health Services 2001 Survey of California Hospitals-Infant Feeding Policies and Practices, distribution of discharge packs containing infant formula or infant formula coupons was negatively associated with higher rates of exclusive breastfeeding practices and hospitals that use educational material from formula companies were more likely to have lower exclusive breastfeeding rates.

(l) New mothers deserve the right to make informed decisions about infant feeding based on information that is free of commercial influence. Instead of placing the health of women and babies at risk by facilitating formula marketing, health care institutions should provide women with the factual and scientific information needed to truly make an informed choice about infant feeding.

SEC. 2. Section 1264 is added to the Health and Safety Code, to read:

~~1264. (a) A general acute care hospital shall provide or arrange for the provision of a minimum of 18 hours of basic lactation management training for all licensed nurses working in the maternity unit of the hospital.~~

~~(b) A licensed nurse may demonstrate proficiency in basic lactation management, in accordance with standards established by the State Department of Health Services, in lieu of completing the training required under this section.~~

SEC. 2.—

1264. (a) A general acute care hospital is recommended to provide or arrange for the provision of basic lactation management training for all health care practitioners who are permitted to provide these services in the hospital’s maternity unit. Training curricula selected by hospitals shall be based on

1 *breastfeeding management guidelines that are evidence-based,*
2 *consistent, accurate, and clinically appropriate in order to*
3 *effectively impact breastfeeding initiation and duration, and that*
4 *are based on the following International Lactation Consultant*
5 *Association’s “Evidence-Based Guidelines for Breastfeeding*
6 *Management during the First Fourteen Days”:*

7 (1) *Human milk provides all of the fluid and nutrients necessary*
8 *for optimal infant health, growth, and development.*

9 (2) *Early initiation of breastfeeding facilitates the*
10 *establishment of lactation.*

11 (3) *Exclusive breastfeeding should be encouraged and*
12 *facilitated for healthy mothers with healthy, term infants.*

13 (4) *Use of supplements or pacifiers in the hospital is associated*
14 *with a risk for early weaning and should be avoided unless*
15 *medically indicated.*

16 (5) *Attention to early feeding cues facilitates correct latch-on*
17 *and effective suckling.*

18 (6) *Unrestricted breastfeeding (8-12 times per 24 hours)*
19 *promotes adequate milk production and enhances infant health.*

20 (7) *Milk transfer occurs more readily with appropriate*
21 *positioning and latch-on.*

22 (8) *Rooming-in facilitates the breastfeeding process.*

23 (9) *Assessment is a prerequisite to intervention and should*
24 *include recognition of signs of effective and ineffective*
25 *breastfeeding.*

26 (10) *Identification of maternal risk factors for breastfeeding*
27 *difficulties allows for appropriate assistance and followup.*

28 (11) *There are few absolute contraindications to breastfeeding.*

29 (12) *Providing anticipatory guidance that includes realistic*
30 *expectations of the breastfeeding process can prevent premature*
31 *weaning.*

32 (13) *Ensuring that materials and services are appropriately*
33 *provided considering the woman’s cultural background,*
34 *education, and primary language.*

35 (b) *A general acute care hospital is recommended to provide or*
36 *arrange for the provision of training on the safe preparation and*
37 *appropriate bottle-feeding techniques of infant formula for all*
38 *health care practitioners who are permitted to provide these*
39 *services in the hospital’s maternity unit. Training curricula*
40 *selected by hospitals should include the following principles based*

1 on education and training materials developed by the Women,
2 Infants, and Children Program Branch of the State Department of
3 Health Services:

4 (1) Formula feeding carries risks and improper use can lead to
5 hazards.

6 (2) Breastfeeding is the normal standard on which to base
7 infant feeding patterns.

8 (3) Babies should always be held when bottle-feeding to
9 maximize bonding and to prevent the risks associated with bottle
10 propping.

11 (4) Reading and following directions for the preparation of all
12 types of formula is vitally important to prevent the misuse of
13 formula and negative impacts on the infant.

14 (5) Proper sanitation of bottles and artificial nipples prevents
15 rapid bacterial growth.

16 (6) Providing anticipatory guidance on when to discard unused
17 infant formula in the bottle and in the refrigerator prevents rapid
18 bacterial growth.

19 (7) The use of infant formula results in an increased cost in
20 caring for the infant and may vary according to the type of formula
21 and brand of formula being consumed.

22 (8) Providing anticipatory guidance regarding formula
23 intolerance may prevent frequent formula switching.

24 (9) Ensuring that materials and services are appropriately
25 provided considering the woman's cultural background,
26 education, and primary language.

27 SEC. 3. Section 1264.5 is added to the Health and Safety
28 Code, to read:

29 ~~1264.5. A general acute care hospital shall adopt a policy~~
30 ~~prohibiting the marketing of infant formula and the distribution of~~
31 ~~free formula samples in the hospital's maternity unit.~~

32 SEC. 3.—

33 1264.5. (a) No manufacturer of infant formula may market
34 infant formula and distribute free infant formula samples in the
35 hospital's maternity unit, nursery, or any other location in the
36 hospital.

37 (1) This section shall not prevent a new mother from receiving
38 formula from the hospital needed to feed her baby while in the
39 hospital under both or either of the following circumstances:

1 (A) *The mother chooses to formula feed and therefore requests*
2 *formula.*

3 (B) *The mother is directed by a physician, or a physician*
4 *determines, that there is a medical need for formula feeding or*
5 *formula supplementation or due to a preexisting medical*
6 *contraindication that prevents her from breastfeeding. The*
7 *provision of formula under this circumstance shall include*
8 *instructions on the safe and proper use of formula.*

9 (2) *This section shall not prevent the hospital from providing*
10 *feeding supplies to be taken home for children with special needs*
11 *who require formula supplementation or exclusive formula*
12 *feeding due a medical condition, as directed by the attending*
13 *physician.*

14 (b) *A hospital's maternity unit and nursery may not be used for*
15 *display of products, or placards or posters concerning these*
16 *products, or for the distribution of material provided by a*
17 *manufacturer or distributor.*

18 (c) *Donations or low-price sales to a hospital of supplies of*
19 *infant formula for use as outlined in subdivision (a) may be made.*
20 *The formula may bear a company's name or label.*

21 (d) *The following definitions apply for purposes of this section:*

22 (1) *"Infant formula" means a breast milk substitute formulated*
23 *industrially to satisfy the normal nutritional requirements of*
24 *infants.*

25 (2) *"Label" means any tag, brand, mark, pictorial or other*
26 *descriptive matter, written, printed, stenciled, marked, embossed*
27 *or impressed on, or attached to, a container of any products within*
28 *the scope of this section.*

29 (3) *"Manufacturer" means a corporation or other entity in the*
30 *public or private sector engaged in the business or function,*
31 *whether directly or through an agent or through an entity*
32 *controlled by or under contract with it, of manufacturing infant*
33 *formula.*

34 (4) *"Marketing" means product promotion, distribution,*
35 *selling, advertising, product public relations, and information*
36 *services.*

37 (5) *"Samples" means single or small quantities of a product*
38 *provided without cost.*

39 (6) *"Supplies" means quantities of a product provided for use*
40 *over an extended period, free or at a low price.*

1 *(e) The department shall consider compliance with this section*
2 *and Section 1264 when it conducts any licensing, audit, or*
3 *certification review of hospital maternity wards and nurseries.*

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

